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Letter dated 23 March 2000 from the Permanent Representative of Bosnia and Herzegovina to the United Nations addressed to the President of the Security Council

Please find enclosed a letter dated 22 March 2000 from H.E. Mr. Ante Jelavić, Member of the Presidency of Bosnia and Herzegovina, expressing the position regarding the International Tribunal for the Former Yugoslavia (see annex). Mr. Jelavić has requested that the enclosed letter be circulated as a document of the United Nations.

May I ask for your kind assistance in circulating the text of the present letter and its annex as a document of the Security Council.

(*Signed*) Muhamed **Sacirbey**
Ambassador and Permanent Representative

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Annex

Letter dated 22 March 2000 from His Excellency Mr. Ante Jelavić, Member of the Presidency of Bosnia and Herzegovina, addressed to the President of the Security Council

I should like to refer to the issue of the International Tribunal for the Former Yugoslavia, an institution that could play a crucial role in either the success or the failure of the General Framework Agreement for Bosnia and Herzegovina. The prosecution of individuals responsible for crimes of war, if carried out with fairness and equity, should lead to timely reconciliation and provide a key element of stability in the countries of the region.

As the Tribunal is about to enter its eighth year of existence, it is time to review the work it has completed to date. Issues such as the most recent judgement, the lack of progress regarding the Srebrenica case, the make-up of indictments and the imprisoned, as well as the issue of the competence of the Tribunal over individual responsibility versus institutional responsibility and the character of the conflict should be of particular concern, especially in the light of their destabilizing consequences.

The Tribunal as a new institution, and in many ways without precedent, is growing with predictable deficiencies and the kinds of shortcomings that are common to all nascent institutions. However, if the Tribunal is to achieve the extraordinary and complicated goals it set forth for itself, it must redress these deficiencies and shortcomings in an honest and timely fashion. Moreover, it is important that the body of law established by this Tribunal set precedents for the future International Criminal Court that will not jeopardize the latter's standing with those Member States that fall under its jurisdiction.

Therefore, I should like to propose in this respect that the Security Council consider whether this is an appropriate time to undertake a comprehensive review of the work of the Tribunal, and appoint a commission of respected and area-experienced practising jurists that could recommend to the Council possible changes in the Statute, the Rules of Procedure and Evidence, as well as in the capacity of the Tribunal, the rights of the accused and the proper defence of the accused. The countries over which the Tribunal has jurisdiction should be party to the selection of such jurists so that these countries become a part of the process, rather than only its target. Absent such remedial steps, the Tribunal could find itself feeding, rather than starving, the fires of collective blame and vengeance, and reopening, rather than healing, the deep wounds of war in our country.

The Security Council should also take under review the establishment of a new body, preferably outside the Tribunal, that would address appeals. Taking into consideration the number of cases now being heard, and those awaiting trial, as well as those expected to be brought for trial in the near future, the present small number of Trial Chambers will be unable to handle the enormous caseload. Moreover, the present appeals system lacks credibility among the countries which are under its jurisdiction as well as in the legal community. It brings into question the right of effective appeal, since the judges who make decisions also hear appeals in related cases involving essentially the same decisions, raising clear and fundamental conflict-of-interest issues.

Most urgently, the Security Council must review the issue of proper defence of the accused. The resources that are now allocated by the Tribunal for the defence of the accused are meagre and in almost all cases fail to provide fair and equitable defence. With such limits the accused are seldom able to engage attorneys with the linguistic and professional skills and knowledge required in an international courtroom of this type. Simply stated, under current circumstances, in which there exists a gross imbalance of resources between the Office of the Prosecutor and the defence, and in which Member States volunteer selective assistance to the Prosecutor but none to the defence, the accused cannot expect to receive fair and timely justice, thereby further damaging the Tribunal's moral and institutional credibility.

It is my strong view, therefore, that these issues represent a stumbling block to the peace process in Bosnia and Herzegovina and the region in a most serious way, thus requiring the immediate attention of the Security Council through the mechanism of an open debate.

(*Signed*) Ante **Jelavić**
Member of the Presidency of Bosnia and Herzegovina